HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

CLR No. 247 of 2001

The Collector Dehradun & others

Vs.
Sri Jitendra Kumar

Approved for reporting.

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~~Not approved for reporting.~~

Dated of decision 20.7.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

AT NAINITAL

RESERVED

Civil Revision No. 247 of 2001 (Old No. 496/1995)

1. The Collector, Dehradun
2. The State of U.P.
3. Pradhanacharya,
   Rajkiya Polytechnic Sansthan, Dehradun ……..Revisionists

Vs.

Sri Jinendra Kumar ……Respondent

Delivery of Judgment 20.7.2004

Hon'ble Rajesh Tandon, J.

Heard learned counsel for the revisionists and learned Standing Counsel.

By means of this civil revision under section 151 of the Code of Civil Procedure (for short 'Code'), the legality and propriety of the judgment and order dated 28.10.1995 passed by the IInd Additional District Judge, Dehradun in Execution Case No.22/1995 has been challenged. The Collector, Dehradun and S.L.A.O., Dehradun was directed to deposit the cheque/pay order in the name of the decree holder by 30.12.1995 by the IInd Addl. District Judge, Dehradun.

On a perusal of the judgment, it is evident that a sum of Rs. 2,00,615.64/- was awarded on 21.10.1995 with the direction to the judgment debtor to comply with the order by 28.10.1995.

It has been mentioned by the learned counsel for the applicants that the amount has already been deposited in connection with the land acquisition proceedings. However, the learned counsel for the State has argued that since he has filed the appeal and sought condonation of delay therefore he has prayed for staying the execution of the case. The executing court has recorded the finding to the following effect:-

"From the aforementioned law it is clear that the J.Ds have to show sufficient cause under order 21 Rule 26 for getting the execution stayed. In this connection ,they had to show sufficient cause as to why they were prevented from filing the appeal when a contested judgment and decree had been passed on 12.5.1995 whereas in other L.R. cases decided by my learned predecessor after 12.5.1995 and appeals have already been filed before the Hon'ble High Court and the J.D.s had even complied the conditional orders passed by the Hon'ble Allahabad High Court. In this view of the matter the court is of the view that the J.D.s are definitely negligent and are responsible for their inaction in not preferring an appeal before the Hon'ble High Court till now. Their bonafides are also not clear as to why they did not prefer an appeal in the instance case whereas they have preferred appeals in other L.A. cases which were decided by my learned predecessor after 12.5.1996. Therefore, the court is of the view that the J.Ds have failed to show any sufficient cause for staying the execution.

The revisionist has relied upon Order 21 Rule 26 of the Code of Civil Procedure, the same is quoted below:-

''26. When Court may stay execution – (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating; to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution

may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or impose conditions upon, judgment-debtor- Before making an; order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court shall require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit."

On a perusal of sub-clause 1 of Rule 26 provides the contingencies where the stay can be granted. In the present case the State has already deposited the amount as will appear from the findings of the executing court to the following effect:

"The learned counsel for the J.Ds Sri S.R. Nagalia D.G.C.(Civil) further argued that in PLA account money of different beneficiaries is available which they have deposited in this account in connection with the land acquisition for them. Taking this argument of the learned counsel for the J.Ds to be true legal position is that when the amount is available in the PLA account the money available in State Fund for the purpose. The full bench of Hon'ble Supreme Court in Mangat Ram case has emphatically held that the compensation in land acquisition cases is to be paid from the funds of acquiring bodies or money available in the State Coffers. The J.Ds. do not deny availability of money in the PLA account and the attachment has already been done for the decreetal amount as such the argument of the learned counsel for the State Sri S.R .Nagali D.G.C. (Civil) that the J.Ds not in a position to make available the decreetal amount is unfounded and is not legally tenable.

From the above discussion the court is of the view that the J.Ds. are not entitled for stay of the execution under Order 21 Rule 26 of the C.P.C. The application is meritless and is liable to be dismissed and is dismissed accordingly."

In view of the above, I find no illegality or error of jurisdiction in the order passed by the then IInd Addl. District Judge and therefore the revision lacks merit and is liable to be dismissed.

The revision is hereby dismissed. No order as to costs.

(Hon'ble Rajesh Tandon, J.)

20.7.2004
Rt